

Before the  
Federal Communications Commission  
Washington, DC 20554

RECEIVED

FEB 23 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Federal-State Board on Universal )  
Service )

CC Docket 96-35

REPLY COMMENTS OF  
DONALD and AIDA JOHNSON

**Executive Summary**

On December 21, 2000, the President signed into law the Children's Internet Protection Act (CHIP Act) requiring that schools and libraries must have Internet safety policies with technology protection measures ("safety policy/technology protection measures") for computers with Internet access as a condition to receive universal service funds or discounts. The CHIP Act requires the Commission to ensure that regulations must be effective no later than 120 days after the December 21, 2000 date of enactment of the Act. The Commission should adopt rules consistent with Congress' intent in the CHIP Act to protect children, the most affected party. The Commission should adopt rules that allow the participation of local parents and children in the determination of an Internet safety policy/protection measure(s) compliant with the CHIP Act (*i.e.* public hearing). The Commission should adopt rules that provide the greatest notice to children and parents, the most affected parties. The Commission should require an expressly defined certification that the school or library has in place an Internet safety policy/protection measure(s) that protects against access to visual depictions that are obscene, child pornography, or harmful to minors and is enforcing the operation. Finally, the Commission should adopt rules that enforce noncompliance with the act through the maintenance of a public inspection file and posting on a public bulletin board copies of the Internet safety policy/protection measure(s), the certification, hearing record, comments and complaints thereto.

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Board on Universal	)	CC Docket 96-35
Service	)	
	)	

**REPLY COMMENTS OF  
DONALD and AIDA JOHNSON**

1. Donald and Aida Johnson hereby submit comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") seeking comment on proposed rules implementing the Children's Internet Protection Act ("CHIP Act")<sup>1</sup> in CC Docket 96-35.<sup>2</sup> We are parents of three elementary school age children that attend schools in Prince William County, VA, who are eligible to receive universal service funds and discounts for computers with Internet access.<sup>3</sup> In addition, our family uses the Prince William County, VA library system, which is also eligible for universal service funds and discounts. Any final rules codifying the CHIP Act directly affect our children and us as parents.

**Background**

2. In the Telecommunications Act of 1996, Congress enacted legislation to help subsidize its goal of bringing computers with Internet access to schools and libraries throughout the nation. Congress sought to encourage Internet access and provide minors and adults with the vast amount of information and opportunities on the Internet. In order to achieve this goal, the Federal Communications Commission (FCC) would administer the Universal Service Program by

<sup>1</sup> Pub. L. No. 106-554, Child Internet Protection Act. Section 1721 of the CHIP Act amends section 254(h) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

<sup>2</sup> In the Matter of Federal State Joint Board on Universal Service, *Further Notice of Proposed Rulemaking*, CC Docket 96-35, FCC 01-31, released January 23, 2001 (FNPRM).

<sup>3</sup> Children are defined as minors under the age of 18 years of age.

providing funding and discounts to schools and libraries. However, the Internet is also filled with numerous Internet sites that contain visual depictions that are obscene,<sup>4</sup> contain child pornography,<sup>5</sup> and/or are harmful to minors. Unfortunately, the entities that operate these Internet sites do not protect their sites from access by minors and, in many cases, use web site names that unwittingly fool users because their domain names do not indicate that the sites contain obscene depictions.<sup>6</sup>

3. On December 21, 2000, the President signed into law the Children's Internet Protection Act (CHIP Act)<sup>7</sup> requiring that schools and libraries must have Internet safety policies with technology protection measures ("safety policy/technology protection measures") for computers with Internet access as a condition to receive universal service funds or discounts.<sup>8</sup> Congress' intention when it adopted the CHIP Act was to protect minors and adults from unwittingly being exposed to obscene depictions, child pornography or other sites harmful to minors on computers with Internet access, which are subsidized through universal service funds and discounts. In the Committee Report, the Committee stated that the purpose of the CHIP Act was to "protect America's children."<sup>9</sup> We also note that the CHIP Act allows schools and libraries to use universal service funds and discounts to pay for Internet safety policy/technology protection measures.<sup>10</sup>

### **Discussion**

4. The CHIP Act requires that schools and libraries receiving universal service funds and discounts certify, for each funding year, that schools and libraries have in place a safety

---

<sup>4</sup> See 18 U.S.C. § 1460.

<sup>5</sup> See 18 U.S.C. § 2246.

<sup>6</sup> See Report of the Committee on Commerce, Science, and Transportation, CHIP Act, Report 106-41, at p. 3 (use of the search term "water baby" will lead children to web sites that contains obscene pictures).

<sup>7</sup> The CHIP Act requires the Commission to ensure that regulations are effective within 120 days of the December 21, 2000 date of enactment.

<sup>8</sup> See § 1721 of the CHIP Act.

<sup>9</sup> See Committee Report at p. 1.

<sup>10</sup> *Id.* at p. 10.

policy/technology protection measure which protects against access to obscene depictions, child pornography or other sites harmful to minors. The statute also requires that schools and libraries provide reasonable public notice and hold at least one public hearing to address the proposed Internet safety policy/technology protection measure. The purpose of the certification is not simply to verify that the school or library has a policy in place to allow it to receive universal service funds and discounts. More importantly, the certification and policy are to inform parents and children about the presence of harmful materials and assure that the child is protected from unwanted or accidental viewing of visual depictions that are obscene, child pornographic, and harmful to minors. The CHIP Act also clearly sets out certain timeframes and deadlines that schools and libraries must meet in order to comply with the provisions of the CHIP Act. Finally, the CHIP Act penalizes schools and libraries for noncompliance with the certification provisions.

5. **Public Hearing.** The *FNPRM* is deficient and does not evidence Congress' intent. First, the *FNPM* does not propose rules regarding local public notice and hearing as required by the CHIP Act so that all interested parties, such as parents and children receive proper notice.<sup>11</sup> The express requirement for public notice and hearing on any proposed safety policy/technology protection measure evidences Congress' intent that the public, including parents and their children, would participate in the process to determine and understand the proposed safety policy/technology protection measure. Therefore, the Commission must adopt rules setting a specific deadline, say September 15, 2001 for schools and libraries to hold hearings.<sup>12</sup>

6. **Certification.** Second, the *FNPRM* tentatively concludes that schools and libraries will only need to check a box that states "I certify that the recipient complies with all relevant

---

<sup>11</sup> See § 1721(A)(iii); see also Comments of Internet Safety Association (ISA) at I, p. 2.

<sup>12</sup> A September 15, 2001 deadline would allow for maximum participation in the first weeks of the school year and be over 40 days before the first certification is due on October 28, 2001. In order to provide reasonable notice as required by the CHIP Act, schools and libraries, or their respective boards should be required to give notice of their hearings by placing notifications and a copy of the proposed Internet safety policy/technological protection measure in a local newspaper twice weekly for at least 30 days prior to the hearing. The Commission should also encourage schools and libraries to provide further notification through fliers.

provisions of the Children's Internet Protection Act, 42 U.S.C. §254(h)"<sup>13</sup> in order to comply with the CHIP Act." The proposed rule in the *FNPRM* reduces Congress' amendments to section 254 of the Communications Act of 1934, as amended, ("Act") to nothing more than an obscure checkbox. The mere certification will provide no guidance for parents and children about how their individual school or library meets the Internet protection requirements of the CHIP Act. The *FNPRM* ignores not only Congress' intent when it wrote the CHIP Act but relevant provisions of the Act. Nor do the proposed rules provide effective notice to the most affected parties, parents and children. We support the comments of the Internet Safety Association at VI, p.4 indicating the proposed generic language also may cause recipients to inadvertently certify compliance. At a minimum, any certification should state that "I certify that the recipient has in place an Internet safety policy with technology protection to protect against access to obscene depictions, child pornography or other sites harmful to minors to comply with all relevant provisions of the Children's Internet Protection Act, 42 U.S.C. §254(h), including the requirements for a public hearing." In order to better comport with Congress' intent, the Commission should also require that a copy of the proposed Internet safety policy/technology protection measure be placed in a public file at the affected school or library, placed on a public bulletin board, and published in a newspaper of general circulation in the community in which the school or library is situated at least 30 days prior to the hearing.<sup>14</sup> After a certification is completed, the school or library should place a copy of the certification along with the safety policy/protection measure in a public file and placement on a public bulletin board for maintenance by each individual school or library.<sup>15</sup> In subsequent years, schools and libraries should certify that their Internet safety

<sup>13</sup> See *FNPRM* at ¶ 6.

<sup>14</sup> See Part 73 of the Commission's rules. Radio and television stations are required to place a copy of the station's renewal application and notify the public in a similar manner so that any member of the public in the coverage area can comment or file a petition to deny the renewal application. In the instant proceeding, the Commission should require similar notification for the most affected parties, parents and children.

<sup>15</sup> Internet Safety Association Comments at I, p.2.

policy/technological blocking measures are substantially effective, on a continuing basis, to comply with the CHIP Act.<sup>16</sup>

7. **Compliance**: Third, the *FNPRM* seeks comment on whether the Commission should adopt rules to remedy noncompliance by schools and libraries that fail to have in place an Internet policy/technology protection measure. The *FNPRM* again arbitrarily ignores the most affected parties in this proceeding, parents and children, because the *FNPRM* only seeks how to implement noncompliance procedures in a fair way to applicants. It is clear that Congress intended the Commission to adopt rules regarding compliance and non-compliance because it set specific deadlines for schools and libraries.<sup>17</sup> The Internet constantly changes along with the technology to circumvent the blocking of obscene sites. Therefore, parents and children need an appropriate forum to provide comments and complaints to their respective schools and libraries. Therefore, the Commission should require schools and libraries to maintain in the public file any comments or complaints regarding the Internet safety policy.<sup>18</sup> Maintaining a public file is a minimal burden since the file could be kept at a library desk, just as some FCC broadcast licensees choose in order to comply with the FCC's public file requirement.<sup>19</sup> In this respect, the most affected parties can hold schools and libraries accountable to their CHIP certifications.

8. In its comments, the American Library Association (ALA) attacks the statute directly because ALA believes there are no technological measures available to meet the CHIP Act and

---

<sup>16</sup> Id. at III, p. 3.

<sup>17</sup> See various sections of the CHIP Act § 1721(E) (I) (certification necessary 120 days after funding year); §1721(E) (I) (II) (timing of certifications); §1721(E) (III) (waiver on compliance limited *only* (emphasis added) when State or local procurement rules or competitive bidding requirements prevent the making of the certification); §1721(F)(i)(ii) (recipient knowingly fails to comply - not eligible for funding or discount rates); §1721(F)(i)(ii) (recipient knowingly fails to comply - reimburse funds or discount rates); §1721(F)(i)(ii)(I)(II) (remedy of noncompliance).

<sup>18</sup> See Internet Safety Association Comments at III, p. 3. In order to maintain the confidentiality of juveniles, schools and libraries should be required to redact any names of juveniles. To the extent any of these proposals require OMB approval, the Commission should seek comment and obtain the approval.

<sup>19</sup> See Part 73 of the Commission's rules; see also Comments of American Center for Law and Justice (ACLU) at 8 (broadcast licensees must maintain public inspection file.) Schools could maintain a public inspection file at the principal's office. If a member of the public wanted to make a copy, he or she could make copies at a machine or be charged a reasonable amount for copies by the school or library.

that certain software will block legitimate Internet sites.<sup>20</sup> This question is not before the Commission. Congress expressly stated that local communities will determine content and criteria and that no federal agency could establish criteria for determination. We believe that the Commission should clarify that schools and libraries may contract with an Internet Service Provider (ISP) or filtering vendor to provide technological measures to satisfy the requirements of the CHIP Act. In other words, an ISP such as Paxway, Integrity Online or other filtering service could provide appropriate technological measures and the ability to monitor chat rooms unsuitable for children. Schools and libraries could benefit from this option because of: a) continuous updated blocking of obscene web sites; b) reduction of costs and software installation; c) and schools and libraries could form consortia to negotiate on a "wholesale" basis.

9. One commenter raised issues about privacy regarding the statute's requirements about the monitoring of minors to prevent minors from using inappropriate chat rooms.<sup>21</sup> The statute is very clear that the Commission has no jurisdiction to develop criteria and it is limited to the administration and verification that schools and libraries must comply with the requirements of the Act. The certifying school, school board, local educational agency, library or other authority after public hearing will make this determination.<sup>22</sup> In addition, ALA requests the Commission find that computers not used by students, but inside the school or library, will not require blocking measures because minors won't use the computers.<sup>23</sup> ALA's argument is misplaced and will in fact cause extraordinary burdens on schools and libraries to identify, delineate and track on a continuing basis so-called "non-student" computers.<sup>24</sup> More importantly, schools and libraries receive universal service funds for hard wiring and installation, which affects the networking and speed of all computers used in the library or school. It wasn't Congress' intent nor does the

<sup>20</sup> ALA Comments at 1.

<sup>21</sup> Comments of Consortium for School Networking (CFSN) at 21.

<sup>22</sup> See CHIP Act at § 1732(l)(2) and § 1732(l)(1)(B).

<sup>23</sup> ALA Comments at 9.

Commission have the administrative capability to make these case-by-case findings for over 80,000 schools and libraries. Therefore, it is both factually and legally impossible for the Commission to make this finding.

10. Finally, CFSN believes the Commission should delay the first certification date one year later from October 28, 2001 to October 28, 2002.<sup>25</sup> The Commission does not have the power to extend the date without the approval of Congress. The CHIP Act specifically states that the first certifications are due within 120 days after the beginning of such program year, which begins on July 1, 2001.<sup>26</sup> The CHIP Act also provides that schools and libraries may certify in the first year that they are undertaking such actions, including any necessary procurement procedures to put in place an Internet safety policy/technological measure in order to comply with the CHIP Act in year two.<sup>27</sup> In the *FNPRM*, The Commission recognized that it does not have the power or rationale to delay the initial certifications.

11. The paperwork burdens imposed by the maintenance of a public inspection file and bulletin board posting would be minimal. The FCC has already proposed that the certification will become part of a FCC Form. The expanded certification, as proposed above, can easily be incorporated into a FCC Form. The public hearing is expressly required by the CHIP Act. Finally, the use of a public inspection file is similar to the requirements for broadcasters, which form the largest number of Commission licensees that are small businesses. If the burden of maintaining public files is required for small business broadcast licensees, it should be easily manageable for a library or school.

---

<sup>24</sup> See §§ 1721(5)(D) and 1721(6)(D) of the CHIP Act allow for the disabling of the technology protection measure for use by an adult for bona fide research or other lawful purpose.

<sup>25</sup> Comments of CFSN at 11.

<sup>26</sup> See *FNPRM* at ¶ 4, citing §§ 254(h)(5)(E)(I)(1) and 254(h)(6)(E)(I)(1) of the CHIP Act.

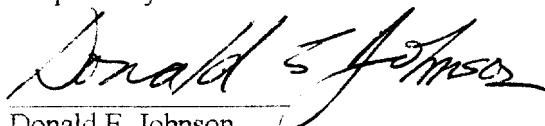
<sup>27</sup> See §§ 1721(5)(E)(i) and 1721(6)(E)(i) of the CHIP Act.



**Conclusion**

12. The Commission should adopt rules consistent with Congress' intent in the CHIP Act and protect children and inform parents, the most affected parties. In this regard, the Commission should adopt rules that allow the participation of local parents and children in the determination of an Internet safety policy/protection measure(s) compliant with the CHIP Act (*i.e.* public hearing). The Commission should adopt rules that provide the greatest notice to the affected parties by requiring an expressly defined certification that the school or library has in place an Internet safety policy/protection measure(s) that protects against access to visual depictions that are obscene; child pornography; or harmful to minors and is enforcing the operation. Finally, the Commission should adopt rules that enforce noncompliance with the Act and maintain accountability through the maintenance of a public inspection file and posting on a public bulletin board the Internet safety policy/protection measure(s), the certification, hearing record, comments and complaints thereto.

Respectfully submitted:



Donald E. Johnson  
Aida F. Johnson  
10009 Moore Drive  
Manassas, VA 20111  
(703) 392-5084

*February 23, 2001*